IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2074 OF 2004

K. Sivasankaran, age 29)
an Indian Inhabitant, residing)
at Kodayam Kurssi House, Karim)
Puzha, Post Palakkad, Kerala,)
now in Mumbai residing at)
C/o. G.Nair, 46/4, Miele Mansion)

Kalina, Santacruz.)...Petitioner
(friend of the
detenu)

Versus

1. The State of Maharashtra)
Through the Secretary to the)
Govt. of Maharashtra, Home)
Department, Mantralaya,)
Mumbai 400 032.)

2. NEELA SATYANARAYANA,)

The Principal Secretary to)
the Government of Maharashtra)
Home Department (Appeals)
and Security) and Detaining)
Authority, Mantralaya,)
Mumbai 400 032.)

3. The Superintendent of Prison)
The Mumbai Central Prison,)
Arthur Road, Mumbai.)

4. The Superintendent of Prison)
Nasik Road Central Prison,)
Nasik.).....Respondents

Mr.Maqsood Khan, Advocate for Petitioner

Mr.D.S.Mhaispurkar, APP for respondents

CORAM : R.M.S.KHANDEPARKAR &
P.V.KAKADE, JJ.
DATE : 21ST MARCH, 2005.

ORAL JUDGMENT : (Per Khandeparkar, J.)

1. Heard. Perused the records.

2. The Petitioner challenges the Order of Detention dated 3rd May 2004 issued under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter called as "COFEPOSA ACT") issued with a view to prevent Shri Joshy Mathew - the detenu in future from smuggling goods. The Petitioner is the friend of the detenu. The order of the detention was executed on 11th June 2004 and since then detenu is being lodged at Nasik Road Central Prison, Nasik.

3. Though the Order of Detention is sought to be challenged on various grounds it not necessary to address to all those grounds and suffice to take into consideration the ground in relation to delay in clamping the order of detention which is stated to have snapped the live link between the prejudicial activities of the detenu and the rational behind clamping of detention order.

4. While assailing the impugned order of detention the learned Advocate for the Petitioner submitted that there has been enormous and unexplained delay in issuing the order of detention from the last date of alleged

involvement of the detenu in the activities of smuggling of goods. While elaborating the arguments in relation to the said ground of challenge, the learned advocate for the petitioner submitted that the alleged involvement of the detenu was admittedly revealed to the Sponsoring Authority in the month of July 2002 and whatever investigation in that regard which was carried out and which has been the basis for issuance of the detention order was available with the Sponsoring Authority by December, 2002 itself and that there is no explanation for moving the proposal for issuance of the detention order as late as in September, 2003 and further forwarding the proposal to the Detaining Authority in March 2004. Indeed the ground for challenging the detention order in that regard in the Petition clearly reads that "the petitioner says and submits that the alleged involvement of the detenu was revealed to the Sponsoring Authority in the month of July 2002 and the statements of A.Srinivasan, Ashfaque alias Munna, Satyapal Sharma and Gangaram Mitbaokar were recorded soon thereafter and the investigation as regards the modus operandi allegedly adopted by the detenu and others had come to light during August 2002 and still the impugned order of detention has been

issued against the detenu after a period of about one year and nine months without there being any satisfactory and reasonable explanation and without there being any alleged prejudicial activities after April 2002 till the issuance of the order in May 2004 for a period of 21 months on the part of the detenu and others". It is contention of the learned advocate appearing for the petitioner that neither the grounds in support of the detention order nor the affidavit in reply filed by the Detaining Authority as well as by the Sponsoring Authority reveal any prejudicial activity having continued by the detenu after July 2002. Therefore, though at the most it can be said that the necessary materials in relation to the alleged involvement of the detenu in the prejudicial activities which according to the Respondents justified clamping of the detention order were available before the Respondents as early as in August 2002, there was no material available to disclose continued involvement of the detenu in prejudicial activities after July 2002 and till the date of issuance of the detention order. In such circumstances in the absence of any explanation for the said delay, it is obvious that the live link between the alleged prejudicial activities of the detenu and

rational behind the clamping of the detention order had snapped. Referring to the affidavits filed by the Detaining Authority and the Sponsoring Authority, the learned advocate for the Petitioner submitted that neither of the affidavits disclose any explanation as such for the said delay. Reliance is placed in the decision in the matter of **Gulam Hussain alias Gama vs. Commissioner of Police Calcutta & Ors - AIR 1974 SC 1336** and **Lakshman Khatik vs. State of West Bengal - AIR 1974 SC - 1264** in support of the contention on behalf of the Petitioner, apart from various other decisions. The learned APP on the other hand referring to the contents of the affidavits filed by the Detaining Authority as well as Sponsoring Authority submitted that the facts stated therein clearly explain in detail the time spent from August 2002 till the date of issuance of the Order and the same also satisfactorily explain that there was neither unwarranted delay in issuing the Order nor the live link between the prejudicial activities of the detenu and the rational behind the clamping of the detention order had snapped. Reliance is placed in the decision of the Division Bench of this Court in the matter of **Rafiq Abdul Karim Merchant vs. Rajendra Singh, Secretary to Govt. of Maharashtra** - 1998 (2)

Mh.L.J. 496.

5. Undisputedly the detention order was issued on account of the involvement of the detenu in the smuggling goods revealed from the investigation carried out in relation to 37 containers which were attempted to be exported during the period from March 2002 to June 2002 by submitting wrong declaration regarding the contents of the containers and the valuation thereof with intention to get undue benefit of DEPB to the tune of Rs.Four crores and odd. The necessary materials in relation to such an attempt of smuggling of goods and the involvement of the detenu in such activities was obviously apparent from the materials collected by the concerned authorities in August 2002 itself. Undoubtedly it is a case of the respondents and it can not be disputed that investigation did proceed further after August 2002.

6. The law on the point regarding the delay in issuing the detention order and the consequences following therefrom is well settled by number of judicial pronouncements. Indeed in **Gulam Hussain @ Gama's** case wherein the delay was of nine months between

the criminal incidents and the order of detention, after taking note of its earlier decision in Lakshman Khatik vs. State of West Bengal (supra), Rameshwar Shaw v. District Magistrate Burdwan (1964) 4 SCR, M.S.Khan v. C.C.Bose (1972) 2 SCC 607, Ashim Kumar v. State of West Bengal (1973) 4 SCC 76 and Sahib Singh Duggal v Union of India AIR 1969 SC 340, the Apex Court held that there must be alive link between the criminal activity on the part of the person to be detained and the purpose of detention, namely, inhibition of prejudicial activity of the species specified in the statute and that the credible chain get snapped if there is too long and unexplained interval between the offending acts and the order of detention. It was further observed that " no authority, acting rationally, can be satisfied, subjectively or otherwise, of future mischief merely because long ago the detenu had done something evil. To rule otherwise is to sanction a simulacrum of a statutory requirement." At the same time, however, the Apex Court has also observed that " but no mechanical test by counting the months of the interval is sound. It all depends on the nature of the acts relied on, grave and determined or less serious and corrigible, on the length of the gap, short or long, on the reason for

the delay in taking preventive action, like information of participation being available only in the course of an investigation. We have to investigate whether the casual connection has been broken in the circumstances of each case."

7. The Apex Court in Lakshman Khatik's case (supra) after referring to the facts of that case which disclosed that the District Magistrate had reached the required satisfaction on the basis of the incidents which had taken place in rapid succession in the month of August 1971, the first incident being of unloading 5 bags of rice having taken place in the afternoon of 3rd August, 1971, the second incident took place on 5th August, 1971, also in the afternoon, practically at the same place where the first incident had occurred and the rice was also removed from the trucks carrying rice and the third incident took place on 20th August 1971 at the same place and that it was also related to the removal of some rice from loaded trucks, the Apex Court has observed that it was not clear from the record whether the detenu was prosecuted for the theft, when it was seen that first incident had been witnessed by two constable and further that if the same was checked, the

District Magistrate could not have been possibly satisfied about the need for detention on 22.3.1972 having regarding to detenu's conduct for seven months preceding to the said date. It was further ruled that "Indeed mere delay in passing in passing a detention order is not conclusive, but we have to see the type of grounds given and consider whether such grounds could really weigh with an officer some 7 months later in coming to the conclusion that it was necessary to detain the petitioner to prevent him from acting in a manner prejudicial to the maintenance of essential supplies of foodgrains. It was not explained why there was such a long delay in passing the order. The District Magistrate appears almost to have passed an order of conviction and sentence for offences committed about 7 months earlier. The Authorities concerned must have due regard to the object with which the order is passed, and if the object was to prevent disruption of supplies of foodgrains one should think that prompt action in such matters should be taken as soon as incidents like those which are referred to in the grounds have taken place". A clear guidelines have been laid down by the Apex Court that in case an order in the nature of detention is to be clamped on account of prejudicial activities by the

detenu, after a lapse of considerable time from the date of detection of the involvement of the detenu in prejudicial activities, it is necessary for the detaining authority to ascertain whether the purpose for which such order is said to be passed would be served or not on account of delay caused in issuing such order and whether the delay has in fact resulted in snapping the live link between the prejudicial activities of the detenu and the purpose behind issuing such order. Undoubtedly, the explanation in that regard can be produced in the Court by way of affidavit in reply to the Petition when the Order is sought to be challenged. However, while once the matter comes up for judicial review, certainly concerned authorities have to disclose satisfactory explanation for such delay.

8. As already seen above in the case in hand, the involvement of the detenu in the prejudicial activities was in relation to the period from March to July 2002 and it was evidently and amply clear to the Respondents in August 2002 itself, but the order of detention was issued as late as on 3.6.2004. Perusal of the grounds in support of the detention order ex-facie do not disclose any justification for the delay in issuing such

order. It would be therefore necessary whether such delay has been explained in the affidavits in reply filed by the concerned authorities.

9. The affidavit in reply filed by the detaining authority discloses that on receipt of the file from Sponsoring Authority it was revealed from the investigation papers that the firms involved in the matter had number of transactions of high value through their banker during the period from 1.1.2002 to 5.6.2002 and in all 37 containers were procured from them which were meant for the export purposes, out of winch 15 were booked in the name of Trend Setters and 22 were booked in the name of M/s Sweety International Pvt. Ltd. and the booking of the said containers were done by Shri Suresh Jain, one of the Director of said M/s.Sweety International Pvt.Ltd. and the detenu along with his associates was involved in obtaining DEPB benefit by fraudulent names in the said activities of attempt to export the goods by 37 containers during the said period. The statement of Shri Suresh Jain was recorded on 8th October, 2002 whereas the statement of detenu was recorded on 18th December, 2002. The proposal by the Sponsoring Authority was submitted on 1st March 2004 in

relation to the detenu herein. After the scrutiny thereof the proposal came before the Desk Officer on 8th March 2004 and it was then forwarded to Deputy Secretary on 9th March 2004, who forwarded it to the Detaining Authority on 10th March 2004. The Detaining Authority after going through the proposal on 11th March 2004 raised certain queries and the comments on the said queries were called from the Sponsoring Authority by letter dated 16th March 2004 while 14th and 15th March 2004 were holidays. The parawise comments on queries were received from Sponsoring Authority on 29th March 2004 and the papers along with the comments were placed before the Detaining Authority on 2nd April 2004, which was followed by the proposal and formulation of draft grounds for detention on 7th April 2004. After necessary perusal thereof and finalisation of the grounds and typing thereof, the same were placed before the Desk Officer on 23rd April 2004 and they were forwarded thereafter to the Deputy Secretary on 29th April 2004, who thereafter on careful consideration endorsed the same on 30th April 2004 and forwarded to the Detaining Authority. Again there were some queries raised by the Detaining Authority and after being satisfied about the queries and finalisation of the

draft, the same was placed before the Desk Officer on 21st May 2004, which was then forwarded to the Deputy Secretary on 25th May 2004 and which was forwarded to the Detaining Authority on 26th May 2004, which was approved and finalised by the Detaining Authority on 3rd June 2004. Undoubtedly the above explanation satisfactorily explains the period from 1st March 2004 till 3rd June 2004 i.e. the period from the date the Sponsoring Authority submitted the proposal to the Detaining Authority till the issuance of the Order of Detention. However, the point which is sought to be argued is not relating to a mere delay in finalising the proposal which was submitted to the Detaining Authority. The point essentially relates to snapping of live link between the prejudicial activities and order which is issued with an intention of curbing such activities. Considering the specific ground raised by the detenu in that regard in his Petition, the answer to which is sought to be given by the Detaining Authority after narration of the time span from 1.3.2004 till 3.6.2004 i.e. from the date of receipt of the proposal till the finalisation of the Order of Detention is necessarily to be considered and it needs to be ascertained whether the said answer gives satisfactory explanation and reply to

the point sought to be raised in the Petition. The explanation in that regard is to be found in para 6 of the affidavit in reply by the Detaining Authority which reads thus :

> "In the facts and circumstances of the case, the time taken to issue the Detention Order was reasonable as it was necessary to carefully and properly consider the matter. On plain reading the Grounds of Detention, it is manifestly clear that detention of the detenu under COFEPOSA Act, 1974 was indeed the only remedy against the detenu. Hence, it is denied that the Grounds of Detention are not proximate to the prejudicial activities of the detenu. It is submitted that the Detaining Authority was also subjectively satisfied that considering the propensity and potentiality, gravity of the offence committed by the detenu, the manner of its commission and other attendant circumstances, there is live link between the said incident and therefore, need to pass the Detention Order was very much in existence and accordingly I have recorded my satisfaction in

paragraph No.20 of the grounds of detention. It is further submitted that during the period between the receipt of the proposal of the present detenu and issuing the detention order there were 5 proposals pending with our office for issuing the order of detention under COFEPOSA Act which were received prior to the receipt of the present proposal. I crave leave to refer to and rely upon for additional comments in the affidavit of the Sponsoring Authority with regard to the said paragraph. In the aforesaid facts it is denied that there is inordinate delay in issuing the Detention Order and after considering the entire papers placed before me, I have recorded my satisfaction in paragraphs 19 and 20 of the Grounds of Detention."

10. Plain reading of the above para which is the only explanation given by the Detaining Authority in reply to the point raised by the detenu about the snapping of the live link between the prejudicial activities and the order of detention passed by the detaining authority to curbe such activities of the

detenu. It is apparent that the explanation which is sought to be given is merely in relation to the period from the date of receipt of the proposal till the date of passing of the order. Undoubtedly, the explanation as regards the period prior to receipt of the proposal cannot be expected from the detaining authority and it has come from the Sponsoring Authority. However, the fact remains regarding the subjective satisfaction of the detaining authority. A detention order has necessarily to be on the basis of the subjective satisfaction of the detaining authority, and therefore, even though the explanation for the delay prior to the date of submission of the proposal to the detaining authority has to come from the sponsoring authority, the affidavit of the detaining authority should disclose that such explanation was to the satisfaction of the detaining authority on the point about the non snapping of the live link between the prejudicial activities of the detenu and the order of detention to be passed by the detaining authority. Section 3(1) of the COFEPOSA Act clearly speaks about satisfaction of the Detaining Authority regarding the need for issuance of the order of detention against the person against whom such order is proposed to be passed. Being so, the Detaining

Authority cannot seek to substitute the satisfaction of the Sponsoring Authority for its own satisfaction. Viewed from this angle it pains to observe that the so-called explanation submitted by the Detaining Authority is not at all satisfactory on the point of non snapping of the live link between the prejudicial activities and the order which has been passed against the detenu.

11. The explanation given by the Sponsoring Authority relates to the delay for the period from the last incident and the alleged illegal prejudicial activities on the part of the detenu and the date of moving the proposal for issuance of the detention order against detenu. As already stated above the activities of the detenu related to the period from March 2002 to June 2002 and the proposal for issuance of the detention order was moved on 1.3.2004. Undoubtedly, the Sponsoring Authority has attempted to give various steps alleged to have been taken in the course of investigation and that being the ground for delay in moving the proposal for issuance of the detention order. The narration of the facts in that regard are to be found in para 5 of the affidavit of Shri A.K.Prasad,

Commissioner of Customs (Imports), New Custom House, Ballard Estate, Mumbai-1. The relevant contents thereof disclose that the preliminary investigation revealed the prejudicial activities of the detenu in July 2002 itself. Statement of Shri A.Srinivasan, Superintendent, Central Excise was recorded on 12.7.2002. Thereafter a statement of Shri Mohammed Ashfaque-uddin alias Munna, Proprietor of M/s. Malik Transport was recorded on 19.8.2002, which statement is stated to have confirmed the fact of transportation of 30 empty containers out of 37 containers from DRC Yard at Chembur of Shipping Agents and deposited in Victory Yard, Govandi, Mumbai. Details of the date of lifting of the said containers from DRC Chembur and the date of depositing at Victory Yard, Govandi were also disclosed by Munna in respect of the said 30 containers. Statement of Shri Satyapal Sharma, Proprietor of M/s. Sumit Road Carriers was recorded on 14.8.2002, wherein it was revealed that he used to pick up the empty containers from DRC yard, Chembur /Victory Yard, Govandi and transport to Nakita Mori Bari Gaon, opposite Sumit Dye Chem, Vasai or Bhiwandi, the place at which the 37 containers were stuffed with drums containing coloured water and thereafter the said containers were transported to JNPT

for export and further that his vehicle never went to Viralimalai with empty containers for stuffing of export cargo of M/s. SIPL or of M/s. Trend Setters. Statement of Shri Omprakash Mishra, proprietor of M/s. P.K.Mishra Transport was recorded on 14.8.2004 wherein it was disclosed that not a single vehicle provided by him or ever gone to Thiruchirappalli, Tamil Nadu and the vehicles never went out of Maharashtra limit. Statement of Shri Gangaram Mitbaokar, Depot Incharge of M/s. Jai Marine Services (Victory Yard), Govandi, was recorded on 16.8.2002 which confirmed the register submitted by him showing the details on which the empty containers entered the yard and the date on which, these empty containers were picked up by M/s. Sumit Road Carriers for onward transportation. Thereafter a statement of Shri Suresh Kumar Jain, Director of M/s. SIPL was recorded on 8.10.2002 wherein it was disclosed that the work related to preparation of export document at Viralimalai was handled by the detenu and his associates and further that the detenu along with his associates were involved in obtaining DEPB benefit by fraudulent means. The statement of associates of the detenu Shri C.P.Ramkrishnan was recorded on 30.10.2002 and statement of the detenu was recorded on 18.12.2002. Both these

statements were recorded after the application for anticipatory bail was rejected and they were directed by Madras High Court to honour the summons by its Order dated 28.10.2002. On 1.1.2003 the Deputy Commissioner, Head Quarters, Anti Evasion, Trichy informed that the detenu and his associates were also directors of M/s. Sabri Exports Pvt.Ltd. having its unit at Viralimalai and registered office at Surat and had exported 8 containers of printing ink from Cochin Port and those containers were shown as stuffed in a single day on 6.7.2002 at their unit at Viralimalai, though the said unit had no infrastructure and Central Excise records did not indicate any clearance. On 2.1.2003 at the instance of Deputy Commissioner, Head Quarters, Anti Evasion, Trichy, Joint Commissioner of Customs, Nhava Sheva and Joint Commissioner of Customs HSB (Exports) Mumbai were requested to provide documents, if any, in relation to any export done by M/s Sabri Exports Pvt. Ltd. from Nhava Sheva or Mumbai Port. On 13.1.2003 Additional Commissioner of Central Excise, Anti Evasion, Tiruchirappalli was requested to summon and/or apprehend the detenu or his associates for recording their statements. On 17.2.2003 Director General of Foreign Trade was requested not to issue DEPB Licence against

the subject exports and on 19.2.2003 the detenu and his associates were again issued summons. In March 2003 the Investigating Officer who was incharge of this case was also handling 20 other cases of investigation was transferred and in his place, new investigation office took over the charge in the month of May 2003. On 30.6.2003 summons was issued to Shri A. Srinivasan, Superintendent of Central Excise to appear on 15.7.2003. Another summons was issued to him to appear on 11.8.2003. Thereafter the proposal for issuance of detention order against the detenu and some others was prepared and placed before the Deputy Commissioner of Customs for his consideration on 1.9.2003. There were also two other proposals for detention orders under COFEPOSA Act prepared simultaneously along with the present proposal by the Investigation Officer and each proposal run into around 400 pages and meanwhile it was learnt that the Central Government had already issued detention Order against Shri S.K.Jain, Director of M/s. SIPL and he was accordingly detained under COFEPOSA Act. The confirmation regarding his detention was received under letter dated 12.12.2003 from Directorate of Enforcement, Mumbai Zonal Unit. After the meeting of Screening Committee held on 17.12.2003 the proposal was

submitted to the Commissioner of Customs, who was not the member of Screening Committee and thereafter on 11.2.2004 Commissioner of Customs (Imports) requested to the Chairman of the Screening Committee to intimate the outcome of the proposals made by the Commissioner of Customs (Imports). The Commissioner of Customs (Imports) received the intimation of approval from the Screening Committee on 20.2.2004. Thereafter the proposal was submitted to the Detaining Authority on 1.3.2004. It is also stated that in the year 2002 Mumbai Customs Commissionerate was restructured and Commissioner of Customs (Import) was made a member of the Screening Committee.

12. Bare reading of the above explanation discloses that from 12.7.2002 till the day the proposal was submitted to the Detaining Authority it nowhere reveals the details of the investigation apart from recording of few statements of some of the persons including the detenu. As regards the recording of the statements are concerned, the records disclose that initially they were recorded in the month of August, 2002, thereafter in the month of October, 2002 and lastly in December 2002. Only investigation which is disclosed after December,

2002 relates to intimation to the Director General of Foreign Trade for not to issue DEPB Licence against the subject export. It is not understood as to why it took so much time for recording statements of various persons and why the Investigating Agency had to wait for days and months together to get the person to record his statement. What prevented the Investigating machinery to take prompt steps and to take recourse to various provisions of law to ensure the appearance of the persons whose statements were required to be recorded? Undoubtedly investigating machinery under Customs Act is not helpless if they require the presence of any person for the purpose of investigation and they can certainly take recourse to various provisions of law to ensure the appearance of persons whose statements are required to be recorded. There is no explanation as to why the recourse was not taken to those provisions. It is merely stated that the statements of the detenu and his associates were recorded only after their application for anticipatory bail was rejected. However, records disclose that such application was rejected on 20.10.2002. What prevented the Investigating Agency from recording the statements immediately after incidents were detected or even immediately after the

rejection of the application and why they had wait till December 18, 2002 for recording statement of detenu and his associates? There is no explanation whatsoever. In any case, merely because the investigation was moving at snail speed even for recording of the statements of various persons, that by itself cannot be a justification nor an answer to the contentions sought to be raised by the detenu regarding snapping of the live link between the prejudicial activities on the part of the detenu and the purpose for which the order was issued against the detenu. As has been laid down by the Apex Court that once there is a delay of more than 2 years in issuing the detention order from the last incident disclosing involvement of the detenu in the prejudicial activities, and the petitioner in that regard having specifically raised the point on account of such delay the live link has been snapped, it was necessary for the respondents to place on record satisfactory explanation in that regard and to demonstrate as to how the live link had been snapped. The so-called explanation regarding delay in recording the statements can never be said to be a sufficient cause for delay nor it can be of any help to the respondents to contend that the live link had not been

snapped.

13. As rightly submitted by the Advocate for the Petitioner it is not mere inaction on the part of the Investigating Agency or failure on the part of the Investigating Agency to conclude the investigation with the necessary speed that by itself can be an answer to the argument regarding snapping of the live link between the prejudicial activities and the purpose for issuance of the order against the detenu. Even, in case of delay being for a shorter period, it is necessary for the Respondents to disclose in the affidavit in reply based on the materials collected by the Detaining Authority, that those materials were sufficient for the Detaining Authority to arrive at the subjective satisfaction regarding the necessity for issuance of detention order against the detenu.

14. If we peruse the explanation tendered by the authorities, as stated above, it nowhere discloses that the live link between the prejudicial activities on the part of the detenu and the purpose behind the order passed against him had remained live on the day the said detention order was passed. Indeed as rightly submitted

by the learned Advocate for the Petitioner neither the affidavit nor materials on record disclose any act or activity involving the detenu directly or indirectly or even the possibility of such involvement in such activity or act which can be said to be prejudicial and having committed during the period from July 2002 till the issuance of the Order. We hasten to say that it does not mean that in each and every case there has to be disclosure about the continuation of the detenu's involvement in such prejudicial activities. However, when there is lapse of more than two years from the last incident which is disclosed as prejudicial activity on the part of the detenu till the issuance of the order of detention, certainly the authority is expected to have applied its mind to this aspect and such explanation if not in the grounds in support of detention, atleast it should have found place in the affidavit filed by such authority in reply to the petition challenging the said detention order. Considering the fact that neither the grounds in support of detention nor the affidavit filed by the Detaining Authority disclose any such material, certainly the detenu is justified in contending that the live link between the prejudicial activities by the detenu and the purpose behind issuance of the said order

against him had snapped on account of such unexplained and unreasonable delay.

15. For the reasons stated hereinabove The Petition succeeds. The impugned Order is hereby quashed and set aside. The detenu - Shri Joshy Mathew is directed to be released forthwith unless required in any other matter. Rule is made absolute in above terms with no order as to costs.

(R.M.S.Khandeparkar,J.)

(P.V.Kakade,J.)